

UNITED STATES DISTRICT COURT
for
EASTERN DISTRICT OF NORTH CAROLINA
DIVISION

U.S.A. vs. Marvin Connelly, III

Docket No. 5:10-CR-99-1BO

Petition for Action on Probation

COMES NOW Scott Plaster, probation officer of the court, presenting a petition for modification of the Judgment Order of Marvin Connelly, III, who, upon an earlier plea of guilty to Transport an Undocumented Alien within the United States by Means of a Motor Vehicle for Private Financial Gain, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii) and 1324(a)(1)(B)(i), and 18 U.S.C. § 2, was sentenced by the Micaela Alvarez, U.S. District Judge for the Southern District of Texas, on August 31, 2009, to a 36 month term of probation under the standard conditions adopted by the court and the following additional conditions:

1. The defendant shall participate in a program, inpatient or outpatient, for the treatment of drug and/or alcohol addiction, dependency, or abuse which may include, but not be limited to urine, breath, saliva and skin testing to determine whether the defendant has reverted to the use of drugs and/or alcohol. Further, the defendant shall participate as instructed and as deemed necessary by the probation officer and shall comply with all rules and regulations of the treatment agency until discharged by the Program Director with the approval of the probation officer. The defendant shall further submit to drug-detection techniques, in addition to those performed by the treatment agency, as directed by the probation officer. The defendant will incur costs associated with such drug/alcohol detection and treatment, based on ability to pay as determined by the probation officer.
2. The defendant shall adhere to the court-ordered schedule for the payment of a fine or restitution, if any.
3. The defendant is restricted to his or her place of residence continuously, except for absences authorized by the probation officer, for a period of 6 months to commence immediately after signed by the Court and filed. The probation officer may approve absences for gainful employment, religious services, medical care, education or training programs, and at other times as may be specifically authorized by the probation officer.
4. The defendant shall pay a special assessment of \$100.00 and a fine of \$1,000.00.

The conditions of probation were modified on January 22, 2010, to include the DROPS program in response to the defendant being charged with Driving While License Revoked in Wake County, North Carolina on September 11, 2009, in addition to the defendant testing positive for the use of marijuana on November 13, 2009, and failing to submit random urine specimens on October 28, November 19, and November 23, 2009. It was also noted that the defendant was driving a motor vehicle after 8:00pm, a violation of a restriction on his driver's license.

Jurisdiction was transferred from the Southern District of Texas to the Eastern District of North Carolina on March 11, 2010.

On August 13, 2010, a violation report was submitted, notifying the court that the defendant had failed to attend substance abuse treatment according to his treatment plan, failed to submit random urine specimens on three occasions, and he had been charged with No Operator's License and Unlawful Use of Highways in Wake County, North Carolina. Additionally, on July 16, 2010, the defendant tested positive for the use of marijuana, and he admitted the same. The defendant was reprimanded for his poor choices and noncompliant behavior, and in lieu of a DROPS sanction, the defendant agreed to resume substance abuse treatment, return to the beginning phase of the Surprise Urinalysis Program, and participate in the HOPE program (Helping Offenders Pursue Excellence), a re-entry court in Raleigh, NC. The court agreed with the probation officer's recommendation, and no further action was taken at the time.

RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS FOLLOWS:

On September 9, 2010, the defendant entered the HOPE Program. Since that time, the defendant has incurred the following program violations: positive drug screen for hydrocodone, failure to submit a random urine screen, failure to attend re-entry court, and failure to attend treatment sessions on three occasions. In response to the violations of program requirements, the defendant has been verbally reprimanded and counseled, written an essay explaining his goals and how he was going to meet the HOPE program requirements, verbally reprimanded a second time, spent one day in custody, performed eight hours of community service, and had his father report to court with him.

On January 4, 2011, the defendant failed to attend another substance abuse treatment session. He was unable to provide a reasonable explanation for his lack of compliance. In light of the defendant's ongoing disregard for his treatment requirements, we are proposing the defendant be placed on home detention with electronic monitoring for a period not to exceed 60 days. Furthermore, he has been advised that any violation during the period of home detention will result in a return to court for revocation proceedings. The defendant signed a Waiver of Hearing agreeing to the proposed modification of supervision.

PRAYING THAT THE COURT WILL ORDER that probation be modified as follows:

1. The defendant shall abide by all conditions and terms of the home detention program for a period not to exceed 60 consecutive days. The defendant shall be restricted to his residence at all times except for pre-approved and scheduled absences for employment, education, religious activities, treatment, attorney visits, court appearances, court obligations or other activities as approved by the probation officer. The defendant shall wear an electronic monitoring device and follow electronic monitoring procedures specified by the probation officer.

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Except as herein modified, the judgment shall remain in full force and effect.

Reviewed and approved,

I declare under penalty of perjury that the foregoing is true and correct.

/s/Jeffrey L. Keller
Jeffrey L. Keller
Supervising U.S. Probation Officer

/s/Scott Plaster
Scott Plaster
U.S. Probation Officer
310 New Bern Avenue, Room 610
Raleigh, NC 27601-1441
Phone: (919) 861-8660
Executed On: January 12, 2011

ORDER OF COURT

Considered and ordered this 12 day of January, 2011, and ordered filed and made a part of the records in the above case.

Terrence W. Boyle
Terrence W. Boyle
U.S. District Judge